

RUSSELL D. FEINGOLD
WISCONSIN

506 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5323
(202) 224-1280 (TDD)
feingold.senate.gov

COMMITTEE ON THE JUDICIARY
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United States Senate

WASHINGTON, DC 20510-4904

August 28, 2003

The Honorable
John D. Ashcroft
Attorney General of the United States
U.S. Department of Justice
10th Street and Constitution Avenue, N.W.
Washington, DC 20530

Dear Attorney General Ashcroft:

I am writing to express my concerns about the Administration's campaign to defend the USA PATRIOT Act, which includes your nationwide tour and a website specially created by the U.S. Department of Justice.

I welcome your desire to clarify any misunderstandings about the PATRIOT Act. I am disappointed, however, that, in your cross-country campaign to defend the PATRIOT Act, you have so far apparently spoken only to hand-picked audiences at venues that are closed to the public. I had hoped that you would use your tour as an opportunity to hear first-hand from citizens about their concerns with the PATRIOT Act. I had also hoped that you would address their concerns forthrightly and honestly. I believe that such an approach would be far more productive than a public relations campaign promoting the PATRIOT Act. Many Americans have serious questions and reservations about the Act, and I urge you to hold some of your future events on the PATRIOT Act tour in public venues and to take questions from the public and the press.

In your remarks launching the tour in Washington, DC, on August 19, 2003, you conspicuously avoided addressing one of the Act's most troubling provisions. Section 215 of the Patriot Act gives the FBI access to any records maintained by a business, including records containing sensitive, personal information about law-abiding Americans. All the FBI has to do to obtain records under section 215 is assert that the records are "sought for" an international terrorism or foreign intelligence investigation. Whenever the FBI makes such an assertion, the court is required to issue an order allowing access; the court cannot review whether the FBI's request is too broad because it includes records pertaining to Americans who are not suspected terrorists or spies. I share the concern of a growing number of Americans who believe that this provision should be amended so that the private information of law-abiding Americans, who are not suspected terrorists or spies, is protected. I hope that you will address this and other

○ 1600 ASPEN COMMONS
ROOM 100
MIDDLETON, WI 53562

○ 517 E. WISCONSIN AVENUE
ROOM 408
MILWAUKEE, WI 53202
(414) 276-7282

○ 401 5TH STREET
ROOM 410
WAUSAU, WI 54403

○ 425 STATE STREET
ROOM 225
LA CROSSE, WI 54601
(608) 782-5585

○ 1640 MAIN STREET
GREEN BAY, WI 54302
(920) 465-7508

provisions of the PATRIOT Act that raise legitimate concerns about the FBI peering into the private lives of law-abiding Americans.

In addition, I would appreciate your responding to the following questions about statements you and the Department have made about the Act:

1. In your August 19 remarks, you referred to a number of the Department's recent successes -- the arrest of Uzair Paracha, who allegedly met an al Qaeda operative overseas and allegedly agreed to assist that operative's clandestine entry to the U.S.; the indictment of an alleged British arms dealer, who was recently arrested in Newark, NJ; and the indictment of suspected al Qaeda sympathizers in Buffalo, Detroit, Seattle, and Portland, OR. You imply that the PATRIOT Act was instrumental in these successes, but you do not directly say so. Please explain which provisions of the PATRIOT Act were used in these investigations and how those provisions assisted the federal government.
2. In your August 19 remarks, you also stated: "Ninety-one percent of Americans understand that the Patriot Act has not affected their civil rights or the civil rights of their families." Your remarks do not cite the source for this statement, but it appears to be a FOX News/Opinion Dynamics poll that the Department also posts on the website it created to defend the Patriot Act (www.lifeandliberty.gov). According to the Department's website, the actual question posed by the poll was, "To the best of your knowledge have *you or a member of your family* had your civil rights affected by the Patriot Act?" (Emphasis added.) This question does not capture what I believe to be the prevailing concern: Americans fear that the civil liberties of law-abiding citizens could be infringed by these new powers. Could you please explain to me how answers to a poll question about whether people believe their own rights already have been infringed are indicative of how the American people feel about whether the PATRIOT Act poses significant civil liberties concerns?
3. I am concerned that the website created by the Department to defend the PATRIOT Act contains material that is misleading or simply inaccurate.
 - (a) The website contains an extensive commentary by Heather MacDonald, who accuses critics of section 215 of ignoring what the law says. She incorrectly states that the court that oversees Foreign Intelligence Surveillance Act (FISA) requests is a check on this provision because an

FBI agent "must first convince the court" that the documents sought are relevant to a foreign intelligence investigation. In fact, under section 215, the court does not have the authority to review the merits of a request. As long as the FBI states that the records are "sought for" a foreign intelligence or international terrorism investigation, the court is required to issue an order. I ask you to remove this flawed analysis from the Department's site.

- (b) The website gives the misleading impression that Congress supports the Department's use of section 215. The Department cites an October 17, 2002, press release from the chairman of the House Judiciary Committee as evidence that Congress is satisfied with the Department's use of section 215. That statement reflects the views of one member of Congress. But, over 140 members of the House and Senate have cosponsored various legislative proposals to modify section 215, such as my bill, S. 1507, the Library, Bookseller, and Personal Records Privacy Act.
- (c) The website contains quotes from a number of Democratic and Republican members of Congress in support of the PATRIOT Act. But the use of these quotes may be misleading because they were made during debate in October 2001 and may not completely and accurately reflect those members' current views. A number of members of Congress who voted for the Act are expressing reservations about the Act and members whose two-year old statements are cited on the Department's website should be afforded the opportunity to post additional comments on the site.

Finally, I ask that you post this letter on the "Congress Speaks" section of the Department's website, so that when members of the public access the website, they will have a more complete view of the congressional response to the PATRIOT Act.

Thank you for your attention to this letter. I look forward to hearing from you and continuing a dialogue about these important questions.

Sincerely,

A handwritten signature in black ink, reading "Russ Feingold". The signature is written in a cursive, flowing style.

Russell D. Feingold
UNITED STATES SENATOR